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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of)	
)	
Order Instituting Rulemaking to Consider)	R. 20-10-002
Regulated Telecommunications Services)	(October 6, 2020)
Used by Incarcerated People)	
)	

COMMENTS OF SECURUS TECHNOLOGIES, LLC

Securus Technologies, LLC (“Securus”) submits these comments in response to the Order Instituting Rulemaking (“OIR”) formally issued by the California Public Utilities Commission (“Commission”) on October 19, 2022 regarding intrastate telecommunication services used by incarcerated people.¹

Securus is committed to working collaboratively with the Commission and other stakeholders to ensure that all rates for calling services provided to incarcerated people (“Incarcerated Calling Services” or “ICS”) are just and reasonable.

I. BACKGROUND

Securus, a subsidiary of Aventiv Technologies LLC (“Aventiv”), is headquartered in Carrollton, Texas, and serves thousands of public safety, law enforcement and corrections agencies and over 1 million incarcerated individuals nationwide. For more than 30 years, Securus and its

¹ The OIR was adopted on October 6, 2020, but it was not formally issued until October 19, 2020.

predecessor organizations have helped maintain relationships between incarcerated individuals and their family and friends through easy-to-use calling options. Securus provides its services in compliance with applicable state and federal regulations, as well as the requirements of each correctional facility. In California, Securus holds a Certificate of Public Convenience and Necessity to operate as a non-dominant interexchange carrier granted by D.04-05-049² and serves over 50 city and county correctional facilities and over 25,000 incarcerated individuals.

Securus endeavors to reduce costs, where possible, and in conjunction with its parent company, Aventiv, launched a comprehensive initiative in 2020 seeking to transform the way it serves the needs of both facility customers and individual consumers. This ongoing effort focuses on five primary areas: (1) access and affordability; (2) transparency; (3) education, reentry and recidivism; (4) listening and responsiveness; and (5) technology and innovation. The first two areas are particularly relevant to this proceeding and progress this year includes:

Access and Affordability: Since January 2020, Securus has eliminated third party single-call service providers, reduced fees by 35 percent and provided free communications valued at over \$20 million. Securus renegotiated contracts with nearly 100 correctional agencies to reduce call rates that had previously exceeded national averages or included higher first minute rate charges, began offering commission-free and agency-paid options for telephone calls to existing and new institutional customers, and obtained reduced pricing on certain third-party vendor contracts to reduce costs for consumers by more than 50 percent.

Transparency: We commissioned an annual report of ICS costs, to be produced and published by an independent third party, including a breakdown of what is being charged beyond the specific cost of the call (*e.g.*, additional costs necessary for the provision of safety protocols and service). We expect this study to be completed by the end of 2020.

² This CPCN was originally granted to Evercom Systems, Inc., which changed its name to Securus Technologies, Inc. as notified to the Commission by Advice Letter No. 3 accepted by the Commission effective October 21, 2010. Securus Technologies, Inc. converted to a limited liability company resulting in a change in the company's legal name to "Securus Technologies, LLC", as notified to the Commission by Advice Letter No. 16 accepted by the Commission effective January 6, 2020.

We are also seeking to make call rates more prominent and easier to understand on Securus' website.

Our full transformation commitments, as well as our progress against them, can be found online at: transformation.aventiv.com

II. COMMENTS

1. ***“Should the Commission exercise its authority to regulate the companies that provide those telecommunications services to incarcerated minors and people in California and, if so, how?”***³

Securus supports the Commission's objectives to ensure that intrastate ICS rates are just and reasonable.

ICS is an inherently different service to provide than traditional consumer calling programs due to the extensive user verification and security requirements of correctional facilities, customer specific infrastructure installation requirements, and customer commissions which are added on top of provider rates. So as to ensure no consumer communities are left without provision of services, any end user rates for ICS must be sufficient for providers to recover the costs of service with a reasonable return on capital, while maintaining standards of affordability for consumers. Currently the Federal Communications Commission (“FCC”) is engaged in a nationwide ICS cost evaluation to serve as the basis for its newly proposed, but not yet adopted, interstate and international rate caps.⁴ This process should produce a fair and reasonable assessment of costs incurred by providers, understanding there can be significant dispersion above and below an average based on realities of the facility, e.g. population size, geography, infrastructure readiness,

³ See OIR, p.7.

⁴ See *Rates for Interstate Inmate Calling Services*, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, WC Docket No. 12-375, FCC 20-111, ¶ 83 (rel. Aug. 7, 2020) (“*ICS Remand Order and FNPRM*”).

security requirements, etc. This type of thorough analysis should inherently precede any ratemaking, and Securus is committed to collaboratively participating in such activity. Although the cost estimates published by the FCC will not be California-specific, the framework used by the FCC (*i.e.*, collecting cost data from industry, analyzing the data, and proposing new rate caps based on such data) should serve as a model for the Commission in establishing new ICS regulations.

In California, although the state prison system is not permitted to receive commission payments,⁵ site commissions remain a legal and often-used feature of ICS rates at county facilities. California Penal Code § 4025(d) specifically allows sheriffs to receive commission payments from telephone service providers relating to “the use of pay telephones which are primarily used by inmates while incarcerated” and to deposit these amounts in the inmate welfare fund. In California, Securus pays more than half of its calling revenues to facility operators in the form of site commissions.

On September 30, 2020, Governor Newsom vetoed SB 555 which sought to, amongst other items, end the use of site commissions in telephone and communications services contracts. Despite his “strong support for the goals of [the] bill”, Governor Newsom expressed concern the bill as drafted “will have the unintended consequence of reducing important rehabilitative and educational programming for individuals in custody”⁶ funded by these commissions. Governor Newsom also expressed his “commit[ment] to working with the Legislature and stakeholders to

⁵ See SB 81 (2007) (phasing out “state concession fees” in contracts to “provide telephone services to wards and inmates in state facilities” by 2010-2011, and reducing rates in response to reductions in concession fees), available at:

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200720080SB81

⁶ See SB 555, available at:

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB555

address this issue in the next legislative session in a manner that mitigates impacts on programming.”⁷

Site commissions are fees Securus neither dictates nor retains. Much like a sales tax that is levied by a local government authority, we collect the funds and pass them on directly to the appropriate agency. As a part of the current landscape, effective rate regulation should recognize site commissions as a component of costs to be recovered through ICS rates or allow the application of commissions as a facility-specific surcharge in addition to the regulated base ICS rate for intrastate calling. At the federal level, the D.C. Circuit court determined “site commissions obviously are costs of doing business incurred by ICS providers”⁸. and the FCC is currently considering inclusion of an allowance for commissions in the base rate for interstate ICS rates.⁹

2. “Should the Commission set rate caps for intrastate calling for incarcerated people, including video calls?”¹⁰

As it pertains to telephone calls, yes, we support a thorough ratemaking process by the Commission to set appropriate caps on intrastate calling tied to the Commission’s authority over public utility telephone services.

With respect to regulation of video conferencing pricing, we remain committed to expanding access and affordability of our services and welcome a dialogue on the topic. However, the term “video calls” is a misnomer since video communications between incarcerated individuals and their loved ones do not use the same infrastructure as telephone calls and have an entirely different

⁷ *Id.*

⁸ See *Global Tel*Link v. FCC*, 866 F.3d 397, 412-14 (D.C. Cir. 2017).

⁹ See *ICS Remand Order and FNPRM* at ¶¶ 99-107 (proposing to include in the new interstate ICS rate caps a per-minute allowance for site commission payments).

¹⁰ See OIR, p. 7.

cost structure. Unlike traditional telephone services, these products require an internet/broadband connection and are provided in Internet Protocol format. They do not use the public switched telephone network at either end of the connection. As a result, video communications are not public utility services subject to the Commission's jurisdiction under existing law¹¹, as the Commission's own Office of Governmental Affairs noted in a June 2019 memorandum, the Commission "has never had authority" over applications like Skype and FaceTime (*i.e.*, video conference services commonly used by the general population).¹² While there may be other forums for addressing this issue, video conference services are not applicable to this rulemaking pursuant to the above.

3. *"Should the Commission limit the types of additional fees providers can charge users of calling services for incarcerated people?"*¹³

Yes, the Commission should consider specifying the types of additional fees providers can charge consumers through the same or similar ratemaking analysis as described above. Securus is committed to reducing fees and increasing transparency for all its services and is adopting the

¹¹ See *Monterey Peninsula Water Management Dist. v. Pub. Util. Com.*, 364 P.3d 404, 407-08 (Cal. 2016) (finding that "Section 451 does not apply to all charges in the abstract, but to charges 'for any product or commodity furnished ... or any service rendered.' This is the language of commercial exchange, not of public revenue collection. Read in context, then, section 451's reference to 'charges demanded or received by [a] public utility' is most naturally understood as referring to charges for products, commodities, and services of the sort that public utilities provide, such as telecommunications, heat, light, water, and power.").

¹² See:

[https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/Office_of_Governmental_Affairs/Legislation/2019/AB%201366%20\(Gonzalez\)%20Position%20Memo%20-%206-24-19.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/Office_of_Governmental_Affairs/Legislation/2019/AB%201366%20(Gonzalez)%20Position%20Memo%20-%206-24-19.pdf).

¹³ See OIR, p.7-8.

ancillary service fee structure recently finalized by the FCC for all ICS services provided, expanding it to cover all intrastate ICS activity even though not currently required.

Specifically, the FCC's ancillary service fee rules limit recovery of fees to five defined categories that ICS providers can charge: (1) Single-Call Service (and Related Services); (2) Automated Payment Fees; (3) Third-Party Financial Transaction Fees; (4) Live Agent Fees; (5) Paper Bill Fees.¹⁴

Given the FCC's success regulating and setting caps for these fees, we support the Commission adopting a similar framework.

4. "Should the Commission act to protect calling services for incarcerated people with communications disabilities by limited charges for inmate calling services calls involving the use of text telephones (TTY)?"¹⁵

Yes, the Commission should act to protect calling services for incarcerated people with communications disabilities. Although Securus is the ultimate service provider at facilities, the TTY services are provided by an unaffiliated third party which Securus does not mark up with any margin. Securus commits to continuing this business practice and to not imposing any added charges for TTY services in the facilities it serves.

III. CONCLUSION

Securus supports the goal of expanding access and affordability for incarcerated individuals and their loved ones to stay connected by telephone by ensuring rates charged for ICS are just and reasonable, whether in the case of intrastate or interstate calling. Should the Commission choose

¹⁴ See 47 C.F.R. § 64.6000(a)(1)-(5). Securus does not charge Paper Bill Fees.

¹⁵ See OIR, p.7-8.

to pursue a rate-making process, we look forward to collaborating with all responsible and involved parties.

	Respectfully submitted, <u>/s/Dennis J. Reinhold</u>
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Dated: November 9, 2020